

**REMARKS/ARGUMENTS**

Claims 1, 4-6, 8-11, 14 and 16-26 are pending in the above application.

The Office Action dated July 24, 2008, has been received and carefully reviewed. In that Office Action, claims 1, 5, 6, 8-11 and 16-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mewhinney in view of Dezonno, and claims 4, 14 and 23-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mewhinney in view of Dezonno and further in view of "the present application." Each of these issues is addressed below, and reconsideration and allowance of the pending claims is respectfully requested in view of the following remarks.

**THE FINALITY OF THE OFFICE ACTION IS PREMATURE**

Claim 1 as amended is identical in scope to original claim 7; that is, the limitations of claim 7 and intervening claims 2 and 3 were added to claim 1 by the last amendment. Likewise, claim 11 is identical in scope to original claim 15 because the limitations of claims 15, 12 and 13 have been added to claim 11. Claims 7 and 15 were originally rejected under 35 U.S.C. 102(e) as being anticipated by Mewhinney. Claims 1 and 11 (identical in scope to original claims 7 and 15) are now rejected on different grounds.

Section 706.07(a) of the MPEP provides that "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims... (emphasis added)." The new rejections of claims 1 and 11 were not necessitated by Applicant's amendment of the claims because claims 1 and 11 are identical to claims that were pending in the original application. The finality of

Reply to Office Action dated July 24, 2008

the present Office Action is therefore submitted to be premature, and the withdrawal of the finality of this Office Action is respectfully requested.

If the examiner maintains that the finality of the Office Action is proper, it is respectfully requested that the examiner state for the record how amendments that amount to rewriting claims 7 and 15 in independent form made necessary a new rejection of these claims.

#### REJECTIONS UNDER 35 U.S.C. 103(a)

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mewhinney in view of Dezonno. The Office Action acknowledges that Mewhinney does not show means for estimating the time remaining on a call from how long an agent speaks and how long a customer speaks. Dezonno shows that in order to determine whether agents are too talkative or whether a prepared sales pitch is taking too long, the amount of time the agent speaks and the amount of time a customer speaks can be measured. However, Dezonno is not related to estimating the time remaining on a call. Therefore, one skilled in the art would have no reason to use the teachings of Dezonno to help estimate the time remaining on a call. A reason for modifying Mewhinney has not been provided, and therefore a prima facie case of obviousness has not been presented in connection with this claim.

Even if Mewhinney were modified based on Dezonno the combination would teach at most an additional feature for Mewhinney - the system of Mewhinney that also provides information on how long an agent spoke and how long a customer spoke. Nothing in the record suggests in any manner how this additional information would be used to estimate how much time remains in a call. The combination of Mewhinney and

Dezonno therefore does not show or suggest means for estimating comprising ... evaluating the proportion of time the customer speaks relative to time the agent speaks, and claim 1 is submitted to be allowable over the applied references for this reason as well.

The Office Action indicates that the reason for modifying Mewhinney is to substitute one estimating means for another. Dezonno measures time but appears to perform no estimation. In fact, the word "estimate" does not appear in Dezonno. Therefore it is not clear how one skilled in the art would substitute one estimating means for another as stated in the Office Action. If the rejection of claim 1 is not withdrawn, it is respectfully requested that the examiner explain how Dezonno discloses an "estimation means" and why one skilled in the art would understand Dezonno's disclosure to be useful in estimating the amount of time remaining in a call. Such a teaching does not appear in Dezonno and the record contains no reasoned explanation to show why one skilled in the art would find Dezonno useful for this purpose.

Claims 4-6 and 8-10 depend from claim 1 and are submitted to be allowable for at least the same reasons as claim 1. Claim 9 further distinguishes over the art of record by reciting that the means for estimating further comprise means for modeling the flow from one phase of the plurality of phases of the call to another phase of the plurality of phases of the call. The Office Action indicates that such means for estimating are inherently disclosed in Mewhinney. As discussed in the previous Reply, in order to rely on inherency to reject a claim, the examiner must show that the missing limitation is "necessarily present" in the reference. MPEP 2112. The record does not show that the disclosed means for estimating are necessarily present in Mewhinney - Mewhinney could operate, for example, without such estimating means. The limitation of claim 9 is

not disclosed in or necessarily present in Mewhinney, the invention of claim 9 is not shown or suggested by the art of record, and claim 9 is submitted to further distinguish over the art of record for this reason.

If the rejection of claim 9 is not withdrawn, it is respectfully requested that the examiner satisfy the requirements of MPEP 2112 and explain why the limitation of claim 9 is "necessarily present" in Mewhinney.

Claim 11 recites a method of estimating the time remaining on a service call that includes, inter alia, evaluating the proportion of time the customer speaks relative to the time the agent speaks. Mewhinney does not disclose this act, and Dezonno in no manner suggests estimating time remaining on a service call by evaluating the proportion of time the customer speaks relative to the time the agent speaks. For this reason, and the reasons provided in connection with claim 1, claim 11 is submitted to be allowable over the art of record.

Claims 14 and 16-18 depend from claim 11 and are submitted to be allowable for at least the same reasons as claim 11. Claim 17 is submitted to further distinguish over the art of record for the reasons provided above in connection with claim 9.

Claim 19 recites an act of performing automated speech recognition on a conversation. This limitation is not mentioned in the rejection of claim 19, and Mewhinney does not show or suggest a method of estimating the time remaining in a call that involves the use of automated speech recognition. Because this limitation is not shown in Mewhinney and because Dezonno does not address this shortcoming of Mewhinney, claim 19 is submitted to be allowable over the art of record.

If the rejection of claim 19 is not withdrawn, it is respectfully requested that the examiner explain where Mewhinney shows automated speech recognition or provide a

reasoned explanation as to why one skilled in the art would have modified Mewhinney to include such a feature.

Claims 20-26 depend from claim 19 and are submitted to be allowable for at least the same reasons as claim 19.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mewhinney in view of Dezonno and further in view of "the instant application." It is respectfully submitted that the detailed description of the present application is not prior art that can be used in rejecting the pending claims. It is therefore respectfully requested that this reference to the present application as being prior art be withdrawn, or that the examiner provide legal authority for using the disclosure of the present invention as prior art.

The examiner appears to be stating that automated speech recognition is known. Applicant acknowledges that the general concept of automated speech recognition is known. However, this in no manner suggests that means for estimating comprising means for performing automated speech analysis on a call as recited in claim 4 is known. The Office Action indicates that Mewhinney can be modified by substituting "one well known speech analysis means for another." It is respectfully requested that the examiner explain for the record what well known speech analysis means is disclosed in Mewhinney and provide a reason that one skilled in the art would substitute automated speech recognition for this well known means so that the basis for this rejection can be understood. The art of record does not show or suggest automated speech recognition in a method for estimating time remaining in a call, and a reason for modifying Mewhinney to produce the invention of claim 4 has not been provided. Claim 4 is submitted to be allowable for at least this reason.

Claim 14 is submitted to be allowable for at least the reasons provided above in connection with claim 4.

Claim 23 recites estimating a time remaining in a call includes recognizing a level of disfluency of the customer. Nothing in the record suggests that recognizing a level of disfluency should be used to estimate the time remaining in a call. Claim 23 further distinguishes over the art of record for this reason.

Claim 24 recites estimating a time remaining in a call that includes determining a speaking rate of the customer. Nothing in the record suggests that determining a speaking rate of a customer should be used in estimating the time remaining in a call. Claim 24 further distinguishes over the art of record for this reason.

Claim 25 recites estimating a time remaining in a call that includes categorizing the verbosity of the customer. Nothing in the record suggests that categorizing the verbosity of a customer should be used in estimating the time remaining in a call. Claim 25 further distinguishes over the art of record for this reason.

Claim 26 recites estimating a time remaining in a call that includes categorizing the accent of the customer. Nothing in the record suggests that categorizing the accent of a customer should be used in estimating the time remaining in a call. Claim 26 further distinguishes over the art of record for this reason.

### **CONCLUSION**

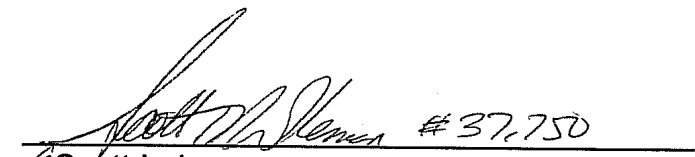
Each issue raised in the Office Action dated July 24, 2008, has been addressed, and it is believed that claims 1, 4-6, 8-11, 14 and 16-26 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better

condition for allowance, the examiner is invited to contact Scott Wakeman (Reg. No. 37,750) at the telephone number listed below.

*Deposit Account Authorization*

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,

  
\_\_\_\_\_  
Scott L. Lowe  
Registration No. 41,458

PO BOX 1364  
Fairfax, VA 22038-1364  
1.703.621.7140

**Date: September 22, 2008**